REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

GS MTE GAINS CORPORATION, Petitioner,	**CTA CASE NO. 8837**
	Members:
- versus -	**DEL ROSARIO,** *P.J., Chairperson* **UY,** *and* **MINDARO-GRULLA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: OCT 08 2018 ; 9:35am

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RESOLUTION

MINDARO-GRULLA, *J.*:

For the Court's resolution is respondent's **Motion for Reconsideration Re: Decision promulgated on March 19, 2018**, filed on April 10, 2018, without petitioner's comment as per Records Verification dated June 7, 2018.

Respondent moves for the reconsideration of the Decision promulgated on March 19, 2018, the dispositive portion of which is quoted as follows:

> "**WHEREFORE**, premises considered, the Petition for Review is **GRANTED**. Accordingly, the Decision dated February 3, 2014 issued by respondent is **SET ASIDE** and the Formal Letter of Demand dated December 1, 2009 for calendar year 2006 is **CANCELLED**.
>
> **SO ORDERED**."

Respondent raises the following grounds in support of his present motion:

1. The Honorable Court erred in ruling that the continuation of the audit beyond the prescribed 120-day period without submission of Progress Report rendered the assessment void.

2. The Honorable Court erred in applying the ruling of the Supreme Court in the case of *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*[1].

Respondent's motion has no merit.

The General Audit Procedures and Documentation (GAPD) issued by the Bureau of Internal Revenue (BIR), as cited by the Court *En Banc* in the case of *Commissioner of Internal Revenue vs. McDonald's Philippines Realty Corporation*[2] emphasizes that a Revenue Officer (RO) is allowed only 120 days from the date of receipt of a Letter of Authority (LOA) by the taxpayer to conduct the audit and submit the required report of investigation. If the RO is unable to submit his final report of investigation within the 120-day period, he must then submit a Progress Report to his Head of Office, and surrender the LOA for revalidation.

In this case, the LOA No. 200700022310 dated November 26, 2007 was received by petitioner on November 28, 2007, authorizing RO Sophia D. Dipatuan to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the calendar year (CY) 2006.

Applying the foregoing rule, RO Sophia D. Dipatuan had therefore 120 days from November 28, 2007 or until March 27, 2008 to conduct the audit and submit the Progress Report. However, RO Sophia D. Dipatuan submitted the Memorandum Report only on October 6, 2009. In this regard, RO Sophia D. Dipatuan should have just submitted a Progress Report and surrendered the LOA for revalidation for the issuance of a new LOA instead of continuing with the audit beyond the prescribed 120-day period. There was nothing in the records which show that the LOA was revalidated on or before

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[1] G.R. No. 222743, April 5, 2017.
[2] CTA EB NO. 1535 (CTA Case No. 8655), January 4, 2018.

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the expiration of the 120-day period. Therefore, the LOA had ceased to be valid and the resulting assessment or examination is a nullity.

To stress, the requirement of the issuance of a LOA authorizing an RO to conduct an examination of any taxpayer is mandatory.

Section 6 (A) of the NIRC of 1997, as amended, vests the CIR the power to authorize the examination of any taxpayer and the assessment of the correct amount of tax due, to wit:

> "SEC. 6. **Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.**
>
> (A) *Examination of Returns and Determination of Tax Due.* After a return has been filed as required under the provisions of this Code, the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax: *Provided, however,* That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer."

Corollary thereto, Section 13 of the NIRC of 1997, as amended, provides that a Letter of Authority is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax, as follows:

> "SEC. 13. **Authority of a Revenue Officer.** - Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, a Revenue Officer assigned to perform assessment functions in any district may, **pursuant to a Letter of Authority** issued by the Revenue Regional Director, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due in the same manner that the said acts could have been performed by the Revenue Regional Director himself." (*Emphasis supplied*)

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The audit process normally commences with the issuance by the Commissioner of Internal Revenue (CIR) of a LOA. The LOA gives notice to the taxpayer that it is under investigation for possible deficiency tax assessment; at the same time it authorizes or empowers a designated RO to examine, verify, and scrutinize a taxpayer's books and records, in relation to internal revenue tax liabilities for a particular period.[3] Hence, before an examination of the taxpayer may be validly done, there must first be a LOA issued to the concerned RO authorizing the conduct of an examination. Without such a LOA, the resulting assessment or examination is a nullity.

Respondent asserts that the case of *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue* involves a complete absence of a LOA while there is a LOA issued in this case. Hence, the ruling in the *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue* is not applicable to this case.

It must be stressed that the case of *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue* merely affirms the requirement that there must be a grant of authority before any RO can conduct an examination or assessment. Such authority comes in the form of a **valid LOA**. In the absence of a valid LOA, the assessment or examination is a nullity.

In this case, the failure of RO Sophia D. Dipatuan to comply with the required procedure for the revalidation of LOA would eventually invalidate the LOA. By continuing with the audit beyond the prescribed 120-day period, without submission of a Progress Report and without the surrender of the LOA for revalidation, RO Sophia D. Dipatuan had acted without authority.

In the absence of competent proof that RO Sophia D. Dipatuan was duly authorized pursuant to a valid LOA, the deficiency tax assessments issued against petitioner, arising from the audit she conducted, is void *ab initio*.

It is said that taxes are what we pay for civilized society. Without taxes, the government would be paralyzed for lack of the motive power to activate and operate it. Hence, despite the natural reluctance to surrender part of one's hard-earned income to the taxing authorities, every person who is able to must contribute his

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[3] *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*, G.R. No. 183408, July 12, 2017.

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share in the running of the government. The government for its part, is expected to respond in the form of tangible and intangible benefits intended to improve the lives of the people and enhance their moral and material values. This symbiotic relationship is the rationale of taxation and should dispel the erroneous notion that it is an arbitrary method of exaction by those in the seat of power. But even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure. If it is not, then the taxpayer has a right to complain and the courts will then come to his succor. For all the awesome power of the tax collector, he may still be stopped in his tracks if the taxpayer can demonstrate, as it has here, that the law has not been observed.[4]

WHEREFORE, premises considered, respondent's **Motion for Reconsideration Re: Decision promulgated on March 19, 2018** is **DENIED** for lack of merit.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

I reiterate my Concurring Opinion

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

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[4] *Commissioner of Internal Revenue vs. San Miguel Corporation*, G.R. No. 205045 and G.R. No. 205723, January 25, 2017, citing the case of *Commissioner vs. Algue,* 241 Phil. 829 (1988).